

# Exhibit B

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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IN RE:	: MDL NO. 07-1871
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AVANDIA MARKETING, SALES	: Philadelphia, Pennsylvania
PRACTICES AND PRODUCTS	: January 30, 2018
LIABILITY LITIGATION	: 10:45 a.m.

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TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE CYNTHIA M. RUFE  
UNITED STATES DISTRICT JUDGE

— — —

APPEARANCES:

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21 Proceedings recorded by electronic sound  
22 recording; transcript produced by computer-aided  
23 transcription service.

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1 MR. FAHEY: Yes, let me try, Your Honor.  
2 Sean Fahey, for the record. I don't think -- and I  
3 think this will become clear as we start to put on  
4 the particularized proof that you asked us to kind of  
5 point you to. And this is all information in the  
6 record already. And we've put together a binder of  
7 documents that are all in the record and we'll kind  
8 of as we go through show you which tab we're pointing  
9 to. But to address the question about whether this  
10 encroaches on the Third Circuit's job that it has to  
11 review your order, we are not seeking sanctions based  
12 on an argument of law. We're not arguing that they  
13 got it wrong when they said they could do aggregate  
14 proof the way that they wanted to and you told them  
15 they couldn't. We're not arguing that some of the  
16 ways, the theories that they had that you, we think,  
17 correctly rejected, we're not seeking sanctions for  
18 their pursuit of those theories.

19 What we're seeking sanctions for is very  
20 fact-sensitive, fact-specific issues, and that is the  
21 utter failure to do any investigation to support  
22 allegations that were made in the complaint about  
23 direct misrepresentations that were made to both UBF  
24 and Allied. So that's not really -- doesn't really  
25 have anything to do with the -- whether that was a

1 legal argument or not a legal argument, but they were  
2 asserting facts saying that GSK made direct  
3 misrepresentations to UBF and Allied, and it has  
4 become clear now that there was never any evidence to  
5 support those claims.

6 So we're not seeking factual  
7 determinations. We're really just trying to say here  
8 are the things that everyone agrees on.

9 THE COURT: As to these two plaintiffs  
10 only?

11 MR. FAHEY: Exactly.

12 THE COURT: One-time plaintiffs only?

13 MR. FAHEY: Absolutely. And the conduct of  
14 the lawyers, as we'll describe in more detail, that  
15 represented those two entities. And so it was really  
16 the factual -- the arguments that they advanced from  
17 a factual standpoint that now everyone agrees there's  
18 no evidence to support them. And I think it will  
19 become clearer as we move forward, but we were very  
20 conscious of the fact that we did not want to somehow  
21 cloud what was happening with the Court's order with  
22 remaining to -- with regard to the remaining  
23 defendants or with regard to the argument that's  
24 going to ultimately be heard in the Third Circuit.

25 THE COURT: All right, which makes it all

1 MR. SOBOL: Well --

2 THE COURT: Let's keep that straight. This  
3 is a very specific motion against Allied, UBF, and  
4 its lawyers for Allied and UBF.

5 MR. SOBOL: I understand that, Your Honor,  
6 but the evidence that Allied and UBF have to support  
7 the claim that they paid for more prescriptions --

8 THE COURT: The evidence that was never  
9 turned over?

10 MR. SOBOL: No. No, no, no, no, no. The  
11 evidence that Allied and UBF used in order to show  
12 that they paid for more prescriptions of Avandia at a  
13 higher price is the exact same evidence that every  
14 other third party payor in the country would use. It  
15 is general evidence that shows --

16 THE COURT: No. No, I -- this is specific.  
17 This is not general pleading allegations --

18 MR. SOBOL: No.

19 THE COURT: -- based on an understanding of  
20 commonality between everyone, hundreds and thousands  
21 of insurers that was represented to me many times in  
22 this courtroom that they all paid. This is specific  
23 and discovery was specific, and that's why we're  
24 still here, because --

25 MR. SOBOL: Well --

1 to have to be a part of a proffer by GSK, which I  
2 haven't frankly seen yet. Again, now, I don't think  
3 that's on the part of the class unless they're asking  
4 for money on -- in connection with cases that are  
5 still going forward.

6 THE COURT: Yes.

7 MR. SOBOL: You know.

8 THE COURT: You are still identifying your  
9 client as "the class," counsel.

10 MR. SOBOL: Well, the putative class I  
11 meant, Your Honor.

12 THE COURT: Or the putative class.

13 MR. SOBOL: Yeah.

14 THE COURT: It's just not what's going on  
15 here. I think what you mean to say is there were  
16 many cases involved and some of the plaintiffs did  
17 turn over some information, others did not, and it's  
18 the two that are at issue here that the monetary  
19 damages should be particularized to.

20 MR. SOBOL: Yes.

21 THE COURT: But not this putative class  
22 anymore.

23 MR. SOBOL: Not that, number one, and  
24 number two, not just --

25 THE COURT: That's not before me and I